

**RESOLUTION NO. 14-022**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING VIP MOTORS CONDITIONAL USE PERMIT NO. UP14-0004 TO  
ALLOW AN INDOOR AUTO BROKER BUSINESS IN AN EXISTING INDUSTRIAL  
BUILDING LOCATED AT 1053 SINCLAIR FRONTAGE ROAD**

**WHEREAS**, the subject property located at 1053 Sinclair Frontage Road was developed in 1965 with an industrial building complex totaling approximately 175, 000 square feet on an eight (8) acre lot. The site has been utilized as industrial uses over the years consisting of warehousing and manufacturing.

**WHEREAS**, on March 6, 2014, VIP Motors of California Incorporated moved into an existing tenant space of approximately 30,200 square feet without City approvals, including proper permits from the City of Milptias' Building Department and a Conditional Use Permit approved by the Planning Commission.

**WHEREAS**, on March 20, 2014, Bryan Shisler representing VIP Motors of California Incorporated submitted an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a Conditional Use Permit No. UP14-0004 to allow an indoor auto broker business in an existing industrial building located at 1053 Sinclair Frontage.

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under Section 15301 of the CEQA Guidelines, Existing Facilities. The proposed project is located in an existing industrial building and no exterior or interior alteration is proposed.

**WHEREAS**, on May 28, 2014, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities since there are no proposed alterations to the existing industrial building.

**Section 3:**     **Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP14-0004:**

- a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The project is consistent with this finding because the project is in the existing industrial building and is permitted under the Zoning Ordinance with a Conditional Use Permit. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare because the building exists and all uses will be conducted wholly within the building.

The applicant will be required to provide ten (10) parking spaces. The auto sales business is primarily conducted via the internet and email, and is by appointment only. It is anticipated that no more than five (5) customers will be at the site at any given time daily. Other industrial uses on site generate low parking demand, and the existing parking condition is anticipated to accommodate the proposed use.

- b) The proposed use is consistent with the Milpitas General Plan, specifically Policy .a-I-3 and 2.a-I-5:*

The project is consistent with this finding because the proposed use supports the following General Plan policies:

- Policy 2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.
- Policy 2.a-I-5 Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.

The proposed indoor auto broker business will encourage economic pursuits by operating a sales business in an existing unoccupied industrial building with Conditional Use Permit approval. The proposal will provide economic opportunities to the Milpitas residents and around the region by providing the sale of high end and classic automobiles.

- c) The proposed use is consistent with the Milpitas Zoning Ordinance:*

The project is consistent with this finding because the industrial complex was constructed in 1965 in conformance with the Milpitas Zoning Ordinance in terms of land use and development standards in terms of land use, setbacks, floor area ratio (FAR), and height. The proposed indoor auto sales is permitted with the Planning Commission's approval of a Conditional Use Permit.

In terms of parking analysis, based upon the discretionary review process and the interpretation process, the Planning Commission can review the project and determine if the proposed use has

an impact on the surrounding environment or if the proposed use is appropriate for the location. The proposed indoor auto broker business is an internet based business and is by appointment only. No more than five (5) customer visits at any given time per day are anticipated at the facility. Ten (10) parking spaces are designated for this proposal and parking is sufficient for the proposed use.

**Section 4:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-022 approving Conditional Use Permit No. UP14-0004 to allow indoor automobile sales in an existing industrial building located at 1053 Sinclair Frontage Road based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on May 28, 2014.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 28, 2014, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL  
VIP MOTORS CONDITIONAL USE PERMIT UP14-0004 TO ALLOW INDOOR AUTO  
BROKER BUSINESS IN AN EXISTING INDUSTRIAL BUILDING LOCATED AT 1053  
SINCLAIR FRONTAGE ROAD**

**General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. 14-0004 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the

indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on May 28, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

#### **Project Specific Conditions**

16. The business hours shall be limited from 10:00 am to 7:00 pm Monday through Friday and 11:00 am to 5:00 pm on Saturday. **(P)**
17. The customer visits for the indoor auto broker use shall be appointment only based on available parking on-site. No more than five (5) customers at any given time daily. **(P)**
18. All activities shall remain inside of the building. No outdoor repair, delaiting, display, or sales activities are allowed. Any outdoor activities will require review by Planning staff to determine the review process and appropriate approval. **(P)**

#### **Building & Safety Department Conditions**

19. The applicable existing Building codes shall be 2013 CBC, CMC, CEC, CPC, Green Building Code, California Energy Code and 2014 Milpitas Municipal Code, unless amended by the City. **(B)**
20. Applicant shall obtain a Business License and Certificate of Occupancy prior to start of any business activities or operation. **(B)**

21. Engineer or architect licensed in the State of California shall prepare all required plans necessary for building permit. Structural design calculations and plans shall be wet signed and stamped prior to obtaining a building permit. **(B)**
22. Required separation in buildings with mixed occupancies shall be per 2013 CBC sec.508. **(B)**
23. Provide allowable area analysis based on building type of construction and allowable areas as per 2013 CBC sec.506.5 and sec.508 **(B)**
24. Two required exit doors shall be placed a distance apart equal to one half of the diagonal dimension of the area served or one-third of the diagonal dimension in fire sprinkled buildings as per 2013 CBC sec. 1015.2.1. **(B)**
25. The minimum number of plumbing fixtures shall be determined as per 2013 CPC sec.422.1 and Table 422.1. **(B)**
26. Occupancy classification for vehicle showroom is B occupancy as per 2013 CBC sec.304.1. **(B)**
27. Vehicles repairs are not permitted in B occupancy. If repairs are performed space shall be reclassified as S-1 occupancy as per sec.311.2 and meet all requirements of repair garage as per sec.406.8. **(B)**
28. Accessible parking for the disabled shall be provided as per 2013 CBC, sec. 11B-208.1. **(B)**
29. Accessible parking spaces shall be dispersed and located closest to the accessible entrances as per 2013 CBC sec.11B-208.3.1. **(B)**
30. One in every eight accessible parking spaces, but not less than one parking space, shall be van accessible as per 2013 CBC sec.11B-208.2.4. **(B)**
31. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2013 CBC, sec. 11B-206.4.1. **(B)**
32. Tactile exit signs shall be provided where exit signs as per 2013 CBC sec.1011.1 and provided as per 2013 CBC sec.1011.3. **(B)**
33. Sanitary facilities shall be fully accessible to people with disabilities as per 2013 CBC, sec. 11B-213.1. **(B)**
34. Provide maneuvering clearances at doors as per 2013 CBC, Sec. 11B-404.2.4. **(B)**
35. At least one accessible counter for each counter type shall be provided for the public and in general employee area. The minimum length for the counter must be 36 inches long and not more 34 inches high per 2013 CBC, Sec. 11B-904.4. **(B)**

36. Provide minimum aisle width per 2013 CBC section 11B-403.5.1 exception 4. Every aisle shall be 36 inches wide if serving one side and minimum of 44 inches wide if serving both sides. **(B)**
37. Each tenant shall be provided with separate disconnect as per City Policy BDP-EL02. **(B)**

**Fire Department Conditions**

38. For the motor vehicles sale area, liquid or gas fueled vehicles, boats or other motor craft shall not be located indoors except as followings per California Fire Code Appendix 1, Section 102.3. **(F)**:
- a. Batteries are disconnected
  - b. Fuel in fuel tanks does not exceed one-quarter tank or 5 gallons
  - c. Fuel tanks and fill openings are closed and sealed to prevent tampering
  - d. Vehicles, boats or other motor craft equipment are not fueled or defueled within the building
39. Car maintenance and repair garage shall conform to the requiremetns of the California Building Code Section 406.8., California Fire Code Section 2311, and all other applicable Building Code, State of California, Santa Clara County, and Milpitas Municipal Code. **(F)**No approval for any hazardous metrials under this CUP. For future review and consideration, the following information will be required:
- Complete chemical inventory and containment details are required at building permit submittal for Fire Hazardous Materials review. HMBPs shall be submitted electronically, HMBPs may be submitted on the California Environmental Reporting System at <http://cers.calepa.ca.gov/>. [Ref.: CFC 5001.5.1] **(F)**
40. Premises identification. New and existing building shall have approved address numbers, building numbers or approved building identification placed in a position that is legible and visible form the street fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardize addressing guidelines. **(F)**
41. Key Box. The fire Code Official is authorized to require a key box to be installed in an approved location if necessary for life saving or fire-fighting purpose. When required, the Knox box location shall be at 6 feet above finished floor, or fire access walkway or road. **(F)**
42. Protable fire extinguishers shall be selected, installed, and maintained in accordance with CFC. **(F)**
43. Under this CUP, no approval is granted for the use, storage, sales or handling of hazardous materials. **(F)**
44. Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. **(F)**



(P) = Planning  
(B) = Building  
(E) = Engineering  
(F) = Fire Prevention  
(CA) = City Attorney